2013 IL App (2d) 111291-U
No. 2-11-1291
Order filed April 2, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-321
TOMASZ S. KLIMCZYK,	)	Honorable Allen M. Anderson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in preventing defendant from inquiring, during *voir dire*, about the prospective jurors' attitudes about mental illness, as defendant's alleged mental illness was not at issue in the case.

¶ 2 Defendant, Tomasz S. Klimczyk, appeals from his convictions of one count of resisting a peace officer (720 ILCS 5/31-1(a) (West 2010)), two counts of aggravated resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2010)), and one count of criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)). He contends that the trial court erred when it did not allow him to inquire at *voir dire* about potential bias toward mental illness. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged in connection with a February 18, 2011, incident, during which defendant approached a vehicle stopped at a red light and stabbed its tire after seeing the driver of the vehicle laughing at the driver of another vehicle. When the police arrived, it took three officers to subdue him.

¶ 5 At a pretrial hearing on February 23, 2010, defendant fell to the floor. At a March 23, 2011, bond reduction hearing, defendant's counsel discussed a report that indicated that defendant had mental issues. At a hearing on May 11, 2010, defendant accused the judge of laughing at him.

¶ 6 Before trial, defendant stated in discovery documents his intent to raise the issue of self defense, but not any other affirmative defenses. The State, noting the lack of an insanity defense, filed a motion *in limine*, seeking to bar evidence that defendant suffered from mental illness. The court granted the motion, but noted that defendant could testify as to his state of mind about how he perceived the incident.

¶ 7 Before jury selection, the court instructed the attorneys that they were not to pose hypothetical situations during *voir dire* unless the court approved. The court instructed the venire to not allow sympathy, bias, or prejudice to have anything to do with their deliberations or decisions. The court also instructed the venire on determinations of credibility, including an instruction that they should not determine that a police officer was right just because of his or her status as a police officer. The court further instructed that, if defendant testified, they were to judge his testimony the same as they would judge the other witnesses'. All members of the venire indicated that they would comply with the instructions.

¶ 8 During *voir dire*, defense counsel asked a potential juror whether she thought a person with mental health issues would be less credible. The court sustained an objection on the ground that it was a hypothetical and noted that mental health was not at issue in the case.

¶ 9 Testimony at trial was that, during the February 18, 2011, incident, defendant angrily approached the vehicle and repeatedly said "[do] you think this is funny?" Defendant then stabbed the vehicle's tire. When officers arrived, defendant used profanities and said that he was sick of cars hitting him. Defendant did not comply with requests to lie down on the ground, and officers subsequently used a Taser on him three times. It took three officers to eventually control defendant. Defendant later told the officers that he thought that the vehicle was going to hit him and that he stabbed the tire to keep it from leaving the scene.

¶ 10 Defendant testified that he thought that the driver of the vehicle was laughing at him and he admitted to stabbing the tire. He said that, when officers arrived, he complied with their requests to lie on the ground, but he did not comply with requests to put his hands behind his back, because he wanted to protect his ribs. He denied resisting in any other way.

¶ 11 Before deliberations began, the court again instructed that the jurors should not let sympathy or prejudice affect their decision and that they should judge the defendant's testimony the same as any other witness's. The jury acquitted defendant of a charge of aggravated assault (720 ILCS 5/12-2(a)(1) (West 2010)) and found him guilty of one count of resisting a peace officer, two counts of aggravated resisting a peace officer, and one count of criminal damage to property.

¶ 12 Defendant moved for a new trial, contending that the court erred when it sustained the State's objection during *voir dire* to questions about mental illness. The motion was denied, and defendant

was sentenced to 180 days in jail and 20 months' probation. Defendant's motion to reconsider his sentence was denied, and he appeals.

¶ 13 II. ANALYSIS

¶ 14 Defendant contends that the trial court abused its discretion when it denied him the ability to question the venire about their views of mental illness.

¶ 15 The manner and scope of *voir dire* are within the sound discretion of the trial court. *People v. Dixon*, 382 Ill. App. 3d 233, 243 (2008). The crucial inquiry is whether the questions posed and the procedures employed created a reasonable assurance that prejudice would be discovered if present. *People v. Jimenez*, 284 Ill. App. 3d 908, 911 (1996). Reversible error will be found only where the trial judge's conduct during *voir dire* amounted to an abuse of discretion and thwarted the selection of an impartial jury. *People v. Edwards*, 167 Ill. App. 3d 324, 331 (1988).

¶ 16 "The purposes of *voir dire* are to (1) enable the trial court to select jurors who are free from bias or prejudice, and (2) ensure that attorneys have an informed and intelligent basis on which to exercise their peremptory challenges." *Village of Plainfield v. Nowicki*, 367 Ill. App. 3d 522, 524 (2006). Thus, when a characteristic is a major issue in a case, *voir dire* questions on the topic must be allowed. See *People v. Strain*, 194 Ill. 2d 467, 477 (2000); *Nowicki*, 367 Ill. App. 3d at 524-25; *Jimenez*, 284 Ill. App. 3d at 912.

¶ 17 Defendant relies on *Strain*, *Jimenez,* and *Nowicki* to argue that he should have been allowed to question the venire about their attitudes about mental illness. But in each of those cases the topic addressed was pervasive in the case. In *Strain* and *Jimenz*, it was error for the trial court to block defense counsel's questioning of prospective jurors about bias against gangs, when there would be evidence that the defendant belonged to a gang. *Strain*, 194 Ill. 2d at 477-81; *Jimenez*, 284 Ill. App.

3d at 915. Likewise, in *Nowicki*, it was error to not allow questions about attitudes toward alcohol consumption and intoxication, when the defendant was charged with driving under the influence of alcohol. *Nowicki*, 367 Ill. App. 3d at 524-25. An overriding factor in each case was that the topic that counsel sought to explore was a key issue in the case.

¶ 18 Here, the issue of mental illness was not a major issue in the case. Indeed it was never made an issue at all. Defendant did not assert a defense based on the existence of mental illness. Defendant argues that his manner of speaking would have made his mental illness apparent to the jury, but the record does not reflect that, and he never presented evidence that he was mentally ill. Because the matter was not material in this case, the trial court did not abuse its discretion when it did not allow questions about it. Further, there is no evidence that the jury was not impartial and, in the absence of such evidence, we presume that the jury followed the instructions that they were given. See *People v. Glasper*, 234 Ill. 2d 173, 201 (2009) (citing *People v. Taylor*, 166 Ill. 2d 414, 438 (1995)).

¶ 19 III. CONCLUSION

¶ 20 The trial court did not err in barring questions to the venire about mental illness when it was not at issue in the case. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 21 Affirmed.